

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #15	CCRB Case #: 202001979	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/28/2020 7:07 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 8/28/2021	EO SOL 4/14/2022	
Date/Time CV Reported Fri, 02/28/2020 9:32 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/09/2020 9:15 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Tony Chacko	01880	946848	044 PCT
2. POM Vladimir Julien	17604	958736	044 PCT
3. POM Frankie Dodd	00195	954741	044 PCT
4. POM Vincent Dempsey	10828	966538	044 PCT
5. POM Benjamin Alvarado	18937	964879	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christopher Alvarado	06589	961611	044 PCT
2. POM Robert Weinberg	30593	965614	044 PCT
3. POM Ariel Gonzalez	21041	958646	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Vladimir Julien	Discourtesy: Police Officer Vladimir Julien spoke discourteously to § 87(2)(b)	
B.SGT Tony Chacko	Abuse: Sergeant Tony Chacko threatened to arrest individuals.	
C.SGT Tony Chacko	Force: Sergeant Tony Chacko used physical force against § 87(2)(b)	
D.POM Vladimir Julien	Force: Police Officer Vladimir Julien used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM Vincent Dempsey	Force: Police Officer Vincent Dempsey used physical force against § 87(2)(b)	
F.POM Vincent Dempsey	Force: Police Officer Vincent Dempsey used physical force against § 87(2)(b)	
G.POM Benjamin Alvarado	Abuse: Police Officer Benjamin Alvarado threatened § 87(2)(b) with the use of force.	
H.POM Benjamin Alvarado	Force: Police Officer Benjamin Alvarado used physical force against § 87(2)(b)	
I.POM Benjamin Alvarado	Abuse: Police Officer Benjamin Alvarado threatened to arrest § 87(2)(b)	
J.SGT Tony Chacko	Discourtesy: Sergeant Tony Chacko spoke discourteously to individuals.	
K.POM Frankie Dodd	Discourtesy: Police Officer Frankie Dodd spoke discourteously to Individuals.	

Case Summary

On February 28, 2020, § 87(2)(b) and her daughter § 87(2)(b) filed this complaint with IAB via telephone. § 87(2)(b) was involved in the incident. § 87(2)(b) was not present during the incident and did not witness it. On March 10, 2020, the complaint was forwarded to the CCRB via IAB log #2020-6917.

At approximately 7:07 p.m. on February 28, 2020, several students from the § 87(2)(b), including § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b) and sisters § 87(2)(b) and § 87(2)(b) traveled to a McDonald's restaurant located at § 87(2)(b) in the Bronx. When some of the students started roughhousing, several bystanders called 911 to report the disturbance. Numerous officers, including units from the 40th Precinct, the 42nd Precinct, the 44th Precinct, responded to the restaurant and started to disperse the students. While doing so, Police Officer Vladimir Julien of the 44th Precinct allegedly told § 87(2)(b) "Suck my dick" (**Allegation A: Discourtesy – Word**, § 87(2)(g)). Sergeant Chacko threatened to arrest several individuals if they did not leave the area (**Allegation B: Abuse of Authority – Threat of arrest**, § 87(2)(g)).

Police Officer Julien and Sergeant Tony Chacko of the 44th Precinct pushed § 87(2)(b) against the side of the building and arrested her (**Allegations C and D: Force – Physical force**, § 87(2)(g)). Police Officer Vincent Dempsey of the 44th Precinct allegedly pushed § 87(2)(b) (**Allegations E: Force – Physical force**, § 87(2)(g)). He then pushed § 87(2)(b) to the ground and arrested her (**Allegation F: Force – Physical force**, § 87(2)(g)). Police Officer Benjamin Alvarado of the 44th Precinct threatened to use a Taser on § 87(2)(b) (**Allegation G: Abuse of Authority – Threat of force**, § 87(2)(g)). Police Officer Benjamin Alvarado also allegedly pushed § 87(2)(b) (**Allegation H: Force – Physical force**, § 87(2)(g)) and threatened to arrest § 87(2)(b) (**Allegation I: Abuse of Authority – Threat of arrest**, § 87(2)(g)). Sergeant Chacko and Police Officer Frankie Dodd of the 44th Precinct also used profanity towards several civilians while ordering them to leave (**Allegations J and K: Discourtesy – Word**, § 87(2)(g)).

§ 87(2)(b) and § 87(2)(b) were ultimately arrested § 87(2)(a) 160.50. § 87(2)(b) was additionally charged § 87(2)(a) 160.50 (Board Review #01). § 87(2)(a) Fam. Ct. Act § 381.3

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Vladimir Julien spoke discourteously towards

§ 87(2)(b).

§ 87(2)(b) was interviewed via telephone on March 31, 2020. § 87(2)(b) § 87(2)(b), provided a telephone statement on April 24, 2020 (Board Review #05). Two

§ 87(2)(b) witnesses provided telephone statements on April 29, 2020 (Board Review #06). § 87(2)(b) was interviewed via telephone on April 29, 2020.

The investigation was unable to obtain statements from two of the victims, § 87(2)(b) and § 87(2)(b). The investigation was also unable to obtain statements from two witnesses, § 87(2)(b) and § 87(2)(b). § 87(2)(b) and § 87(2)(b) both declined to provide statements to the CCRB (Board Review #07).

Police Officer Julien was interviewed by the CCRB on January 26, 2021. Police Officer Dempsey was interviewed by the CCRB on June 2, 2021. Police Officer Christopher Alvarado of the 44th Precinct was interviewed by the CCRB on July 12, 2021. Police Officer Benjamin Alvarado was interviewed by the CCRB on August 30, 2021. Police Officer Gonzalez was interviewed by the CCRB on September 21, 2021. Sergeant Chacko was interviewed by the CCRB on October 26, 2021. The investigation also attempted to interview Police Officer Robert Weinberg of the 44th Precinct but was unable to because he resigned from the NYPD on May 18, 2020 (Board Review #08).

It is undisputed that a large group of students from the § 87(2)(b) gathered at the McDonald's located at § 87(2)(b). Several students started roughhousing at the restaurant, leading § 87(2)(b) and the two § 87(2)(b) witnesses to call 911. Several officers responded to the location and told the students to disperse.

§ 87(2)(b) stated that several male students, including § 87(2)(b) taunted the officers by telling them, "Suck my dick." One of the officers responded by telling § 87(2)(b) "Suck my dick." § 87(2)(b) was not able to describe this officer in detail, stating only that he was a white male. She also stated that this officer later pushed § 87(2)(b) to the ground when she was arrested.

§ 87(2)(b) and § 87(2)(b) made no mention of § 87(2)(b) in her statement. None of the other civilians including § 87(2)(b) or the two § 87(2)(b) witnesses who called 911, mentioned an officer telling, a civilian, "Suck my dick." None of the civilians besides § 87(2)(b) mentioned any officers using discourteous language during the incident.

Police Officer Julien, Police Officer Dempsey, Police Officer Christopher Alvarado and Sergeant Chacko all recalled that several of the civilians started shouting and cursing at the officers when they tried to disperse the crowd. None of these officers recalled specific statements that the civilians made. None of the officers who were interviewed recalled hearing an officer use profanity towards the civilians, including by repeating back a discourteous statement that a civilian made towards them. None of them recalled hearing an officer tell a civilian, "Suck my dick."

Police Officer Julien identified himself as the officer who, later in the incident, pushed § 87(2)(b) to the ground.

Several BWC recordings made during this incident are attached in IA #123 (Board Review #03). Five of the six clips depict the officers attempting to disperse the students gathered at the McDonald's. These clips were recorded by Police Officer Dodd, Police Officer Christopher Alvarado, Police Officer Julien, Police Officer Benjamin Alvarado and Police Officer Gonzalez. Their footage continues on to cover the subsequent arrests of § 87(2)(b), § 87(2)(b) and § 87(2)(b). None of the officers, including Police Officer Julien, are heard using profanity prior to the arrests. None of the officers are heard telling a civilian, "Suck my dick." None are heard repeating a discourteous statement made by one of the students.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Tony Chacko threatened to arrest individuals.

None of the civilians alleged that any of the officers threatened to arrest the people in the crowd prior to § 87(2)(b)'s arrest.

§ 87(2)(b) and the § 87(2)(b) witnesses stated that they called 911 to report the group at the McDonald's. § 87(2)(b) stated that there were about 30 students in the group and that they were fighting both inside and outside the restaurant. Several of them refused to leave when the officers told them to go. § 87(2)(b) made no mention of an officer threatening to arrest anybody. The § 87(2)(b) witnesses stated that a group of about twenty to thirty young people was roughhousing. They were afraid to go into the restaurant because they thought they might get assaulted. They were also concerned because some of the people in the group were in the drive-through lane and might get hit by a vehicle. The § 87(2)(b) witnesses left before the police arrived.

Sergeant Chacko stated that he ordered the civilians at the McDonald's to leave by telling them, "I need you guys to disperse," and, "I'm giving you a lawful order to disperse." He also warned them, "If you don't disperse, you will be arrested for failure to comply." He explained that the civilians could have been arrested for failing to obey a lawful order to disperse and blocking traffic around the restaurant. He further explained that he would prefer to issue summonses for these offenses, but that he anticipated that he would be unable to write summonses because the young people at the restaurant likely would not have had valid identification.

None of the other officers recalled hearing any officers threaten to arrest any of the civilians during this incident.

Police Officer Benjamin Alvarado's BWC footage depicts Sergeant Chacko addressing the crowd. At 2:00 into the recording, Sergeant Chacko tells them, "You guys got two minutes to walk. You know what? If I touch you again, you're going to the precinct. Let's go." None of the other officers are heard threatening to arrest the civilians in the remainder of the video or in any of the other videos. The videos do show that there was a large number of young people gathered at the restaurant and that the police spent several minutes trying to get them to disperse before Sergeant Chacko made this threat (Board Review #03).

§ 87(2)(g)

New York Penal Law §240.20 states that a person is guilty of disorderly conduct when they engage in fighting or in violent, tumultuous or threatening behavior; obstruct vehicular or pedestrian traffic; or congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse (Board Review #09).

§ 87(2)(g)

The witnesses specifically noted that the civilians were fighting and that some of them were blocking the drive-through lane. § 87(2)(g)

Allegation (C) Force: Sergeant Tony Chacko used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Vladimir Julien used physical force against § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that once the officers started telling the students to disperse, she, § 87(2)(b) and § 87(2)(b) turned and started to walk away from them. None of them spoke to or interacted with the officers as they walked away. § 87(2)(b) was walking slightly ahead of § 87(2)(b). While the three of them walked away from the officers, Police Officer Julien approached § 87(2)(b) and pushed her against the side of the building. § 87(2)(b) did not clearly see Police Officer Julien's contact because she was ahead of § 87(2)(b). When she turned around, she saw the officer holding the right side of § 87(2)(b)'s body against the wall by her back and arms. Neither § 87(2)(b) nor Police Officer Julien were saying anything. § 87(2)(b) and § 87(2)(b) turned to Police Officer Julien and asked him why he was holding § 87(2)(b) against the wall. Other officers then began to arrest § 87(2)(b). § 87(2)(b)'s attention was occupied by this other officer, so she did not see what happened to § 87(2)(b) after that.

§ 87(2)(b) stated that when the officers arrived and first approached the students gathered at the McDonald's, § 87(2)(b) started to laugh at Police Officer Julien. Police Officer Julien then shoved § 87(2)(b) on the chest with both hands, causing her to fall to face-down to the ground. He held her down by pushing on her back. § 87(2)(b) tried to stand up, but Police Officer Julien told her, "No, I'm taking you down." § 87(2)(b) did not see Police Officer Julien or any other officers use further physical force against § 87(2)(b).

While § 87(2)(b) did not provide a sworn statement, she alleged in her initial complaint that an officer push § 87(2)(b) to the ground. She did not identify the officer or describe this action in any further detail.

§ 87(2)(b) was not aware of any officers using physical force during this incident. The two § 87(2)(b) witnesses stated that they left the McDonald's before the police responded.

Sergeant Chacko stated that as he and the other officers were ordering the civilians to disperse, he decided to arrest one of them. He did not recall this civilian's name, but the investigation identified her as § 87(2)(b). Sergeant Chacko did not recall why, of all the civilians present, he decided to arrest § 87(2)(b). He did not recall any specific actions § 87(2)(b) took before he decided to arrest her. Once he made his decision, Sergeant Chacko and Police Officer Julien each grabbed one of § 87(2)(b)'s hands. § 87(2)(b) responded by pulling her hands away from the officers. Both officers were able to keep their grip on her hands. They then pulled her arms behind her back. At some point during this time, they may have held § 87(2)(b) against the side of a nearby walkway, but Sergeant Chacko was not certain of this. Sergeant Chacko did not recall himself or Police Officer Julien using any additional force, including striking § 87(2)(b) or forcing her to the ground.

Police Officer Julien stated that § 87(2)(b) ignored the officers' orders to disperse. Sergeant Chacko therefore ordered him to arrest her. When Police Officer Julien tried to handcuff her, § 87(2)(b) offered resistance. He did not recall the specific actions she took to resist her arrest. He then "held her down" to overcome this resistance and, finally, handcuff her. When asked to describe this action in further detail, Police Officer Julien stated that he did not recall his exact actions. He did not recall if he pushed § 87(2)(b) down or against any surfaces or objects. He did not recall if he struck § 87(2)(b).

Police Officer Benjamin Alvarado stated that he noticed Police Officer Julien arresting § 87(2)(b) as the crowd began to disperse. He did not know why Police Officer Julien was arresting her. He did not see what, if anything, § 87(2)(b) did prior to the arrest. He did not recall if Police Officer Julien or § 87(2)(b) engaged in any physical struggle during the arrest. He did not recall seeing Police Officer Julien hit § 87(2)(b) or push her. He did not recall seeing § 87(2)(b) on the ground.

Police Officer Dempsey stated that as the civilians were dispersing, Police Officer Julien directed him to arrest § 87(2)(b). Police Officer Dempsey was not aware of Police Officer Julien or any other officers arresting any other individuals prior to that moment. He did not recall seeing any other individuals being arrested besides § 87(2)(b). Later, when loading § 87(2)(b) into a vehicle, Police Officer Dempsey did learn that § 87(2)(b) had been arrested. He did not know when that arrest took place and was not aware of officers using force during the arrest.

Police Officer Christopher Alvarado and Police Officer Gonzalez both stated that they helped arrest a female. They did not know her name. The investigation identified her as § 87(2)(b). Both officers denied participating in any other arrests. Police Officer Gonzalez did not recall witnessing any other arrests besides § 87(2)(b)s. Police Officer Christopher Alvarado did recall seeing another officer arrest a different female. He did not recall who the female was or who the officer was. He did not recall observing the officer and the female engage in any physical struggle. He was not aware of officers pushing any females to the ground during the incident.

Police Officer Julien's BWC footage shows that he, along with several other officers, respond to the McDonald's and start trying to disperse the crowd. Most of the civilians start walking down the sidewalk, but they turn to face towards the officers to shout at them. At 1:00 into the recording, a female voice shouts out, "Do not touch her." At 1:15 into the recording, Sergeant Chacko looks towards a female who is walking behind him. The video does not show what, if anything, the female was doing before then. Sergeant Chacko asks, "Do you think this is funny?" He then grabs her arms and states, "She's going. Take her... She's under." Police Officer Julien also reaches towards the female. The camera then goes dark and the video ends. (Board Review #02).

Police Officer Benjamin Alvarado's BWC also shows officers dispersing the civilians at the start of the incident. At 2:10 into the recording, Sergeant Chacko is heard asking the female, "Do you think this is funny?" The female is not on-screen at that moment. Her actions before that moment are not seen. Police Officer Benjamin Alvarado's camera then starts shaking and does not clearly show what happens around him. People are heard shouting in the background. Police Officer Benjamin Alvarado tells them to back up. At 2:25 into the recording, he turns around. Multiple officers are seen leaning down over an individual on the ground next to the McDonald's drive-through lane. Neither the officers nor the person on the ground are clearly seen. At 2:35 into the recording, he turns around again, showing two groups of officers leaning down over civilians by the drive-through lane. The civilians and officers are against not clearly seen. At 3:10 into the recording, Police Officer Benjamin Alvarado approaches one of these two individuals and assists Police officer Dempsey in handcuffing them. The investigation identified this individual as § 87(2)(b).

(Board Review #03).

Sergeant Chacko was shown this portion of Police Officer Benjamin Alvarado's BWC footage. He identified the female he approached as § 87(2)(b). After viewing the footage, he recalled that § 87(2)(b) had initially started to walk away from the McDonald's when he and the other officers started dispersing the group. She walked ahead of Sergeant Chacko. She then stopped suddenly, causing Sergeant Chacko to bump into her. The other civilians kept moving. Sergeant Chacko decided to arrest her for failing to disperse because she, alone among the civilians, had stopped walking away.

Police Officer Julien prepared a TRI report for this incident (Board Review #10). It states that he used a "forcible take down" against § 87(2)(b). He did so to overcome her resistance.

Captain Denis O'Hanlon of the 48th Precinct also prepared a TRI to document all three arrests made during this incident (Board Review #11). It states that that Sergeant Chacko ordered Police Officer Julien to arrest § 87(2)(b) for failing to disperse. When Police Officer Julien attempted to handcuff her, they both tripped over the edge of the drive-through lane, causing them to fall.

The BWC footage does not clearly show what force Sergeant Chacko and Police Officer Julien used against § 87(2)(b). Police Officer Julien's footage shows him and Sergeant Chacko reaching for § 87(2)(b)'s arms, but cuts off immediately afterwards. Police Officer Benjamin Alvarado's footage shows that two individuals were lying on the ground near where Sergeant Chacko grabbed § 87(2)(b). One is eventually identified as § 87(2)(b) therefore suggesting that the other was § 87(2)(b). While the footage does not show how § 87(2)(b) ended up on the ground, Police Officer Julien's TRI report indicates that he used a forcible takedown. § 87(2)(b) § 87(2)(b)'s actions before she was forced to the ground are also not shown on the BWC footage.

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to ensure the safety of a third person or when it is reasonable to place a person in custody. All applications of force must be reasonable under the circumstances. Factors to consider when determining if a given use of force was reasonable include the actions taken by the subject, the immediacy of any perceived threat the subject poses, whether the subject is actively resisting custody and the presence of a hostile crowd (Board Review #12).

§ 87(2)(b), § 87(2)(g)

Allegation (E) Force: Police Officer Vincent Dempsey used physical force against § 87(2)(b).
§ 87(2)(b) -

§ 87(2)(b) declined to provide a statement regarding this incident.

§ 87(2)(b) initially stated that when she saw Police Officer Julien arrest § 87(2)(b) both she and § 87(2)(b) went to "help" her. When asked what she meant by that, § 87(2)(b) stated that

they asked Police Officer Julien why he was arresting § 87(2)(b) Police Officer Dempsey then pushed § 87(2)(b) backwards, causing her to fall to the ground. § 87(2)(b) did not see how § 87(2)(b) was positioned on the ground. Police Officer Dempsey then pushed § 87(2)(b) down as well. § 87(2)(b) did not see what happened to § 87(2)(b) after that.

§ 87(2)(b) made no mention of § 87(2)(b) involving herself in § 87(2)(b)'s arrest. She did not mention any officers using force against § 87(2)(b). § 87(2)(b) did not mention § 87(2)(b) in her complaint. § 87(2)(b) was not aware of any officers using physical force during this incident. The two § 87(2)(b) witnesses stated that they left the McDonald's before the police responded.

Police Officer Dempsey acknowledged using force against § 87(2)(b) during her arrest but denied making contact with any other civilians. He was not aware of officers using force against or making physical contact with any of the civilians besides § 87(2)(b). Police Officer Julien, Police Officer Benjamin Alvarado and Sergeant Chacko did not recall officers using force against any civilians besides § 87(2)(b) and § 87(2)(b).

Police Officer Gonzalez stated that he did not independently recall any arrests made during the incident. He did, however, note that he reviewed his BWC footage from the incident about a week before his CCRB interview. The footage showed him assisting an unidentified officer in arresting a female. Police Officer Gonzalez did not know who the female on the video was, who the officer he assisted was, or why she was arrested. Police Officer Gonzalez later saw that other officers had arrested a second female, but he did not know who she was, why she was arrested, or how she was taken into custody. He had not witnessed the other female's arrest.

Police Officer Christopher Alvarado observed officers arrest two civilians during the incident, but he did not recall who they were or which officers arrested them. He assisted in arresting one of them by holding that person's arm behind their back. Police Officer Christopher Alvarado did not recall seeing officers push or otherwise use force against any of the civilians during this incident, including against either of the civilians who were arrested. He did not see any civilians on the ground.

Captain Denis O'Hanlon of the 48th Precinct prepared a TRI to document all three arrests made during this incident (Board Review #11). It states that Police Officer Gonzalez and Police Officer Weinberg arrested § 87(2)(b) for failing to disperse.

Police Officer Benjamin Alvarado's BWC footage depicts the period immediately after § 87(2)(b)'s and § 87(2)(b)'s arrests (Board Review #03). Police Officer Dempsey's own BWC footage was not provided by the NYPD Legal Bureau. At 2:15 into the recording, Sergeant Chacko grabs § 87(2)(b) to arrest her. The camera starts shaking, making it hard to see what is happening on-screen. Several voices start shouting in the background and Police Officer Benjamin Alvarado says, "Get back, get back." Police Officer Benjamin Alvarado and several other officers are then seen pushing several people away. It is unclear who these officers are, who they are pushing or whether any of them fall to the ground. At 2:40 into the recording, two other officers are holding an individual against the side of a parked vehicle. At 3:10 into the recording, Police Officer Dempsey is seen kneeling down next to an individual who is blurred out by the NYPD Legal Bureau's redaction. Police Officer Benjamin Alvarado identified the person in his CCRB testimony as § 87(2)(b). The footage does not show what happened before that moment. It does not show if any civilians approached § 87(2)(b) or Police Officer Dempsey before § 87(2)(b) was forced to the ground. It does not show if Police Officer Dempsey pushed any civilians before that moment.

Police Officer Gonzalez's BWC footage also depicts the immediate aftermath of § 87(2)(b)'s

arrest, which occurs at 1:45 into the recording. As with Police Officer Benjamin Alvarado's footage, the camera starts shaking and shouting is heard once Sergeant Chacko grabs § 87(2)(b). It is unclear what happens during this period. At 2:10 into the recording, a female (who later identifies herself in the video as § 87(2)(b)) asks what Police Officer Gonzalez is doing. He replies that he is handcuffing her. At 2:20 into the recording, Police Officer Gonzalez and another officer are seen to be holding § 87(2)(b) against the side of a car and handcuffing her. After the officers handcuff her, they escort § 87(2)(b) to a nearby police vehicle. She is not seen on the ground at any time. The video does not show an officer pushing her (Board Review).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

The BWC footage shows several civilians scuffling with officers after § 87(2)(b)'s arrest, as well as several officers pushing them away from § 87(2)(b). It does not clearly show who the civilians or officers were, what actions the civilians took as they approach § 87(2)(b) or whether any of them were knocked down. It is unclear if § 87(2)(b) was one of them.

Police Officer Gonzalez's BWC footage does show that she was arrested approximately 25 seconds after § 87(2)(b) was. The video, however, does not show what, if anything, happened to her during that period. It does not show if she approached or interfered with § 87(2)(b)'s arrest. It also does not show if officers used any force during that time, including pushing her down. Neither Police Officer Gonzalez's nor Police Officer Benjamin Alvarado's BWC footage accounts for Police Officer Dempsey's actions during that period either.

The BWC footage does not clearly show whether Police Officer Dempsey or any other officer pushed § 87(2)(b) during the window between § 87(2)(b)'s arrest and her own. § 87(2)(g)

Allegation (F) Force: Police Officer Vincent Dempsey used physical force against § 87(2)(b).

§ 87(2)(b) initially stated that when she saw Police Officer Julien holding § 87(2)(b) against a wall, she and § 87(2)(b) went to "help" her. When asked what she meant by that, § 87(2)(b) stated that they asked Police Officer Julien why he was holding her against the wall. Police Officer Dempsey then stepped in front of the two of them. He pushed § 87(2)(b) to the ground and then pushed § 87(2)(b). Police Officer Dempsey pushed § 87(2)(b) by placing both hands on her chest and shoving her back. § 87(2)(b) landed on her back. § 87(2)(b) blacked out for several seconds immediately after landing. She denied that she made any movements while on the ground after she regained consciousness. Police Officer Dempsey and Police Officer Benjamin Alvarado then handcuffed § 87(2)(b) and took her into custody. § 87(2)(b) did not allege suffering any injuries during her arrest.

§ 87(2)(b) stated that when Police Officer Julien pushed § 87(2)(b) to the ground, § 87(2)(b) responded by jumping onto his back and shouting, telling him to let go of her sister. Police Officer Benjamin Alvarado then pulled § 87(2)(b) off Police Officer Julien's back by wrapping his arms around her stomach and lifting her up. He put her down onto her feet. § 87(2)(b) then took a step towards Police Officer Benjamin Alvarado. He responded by placing both hands on § 87(2)(b)'s chest and pushing her backwards. She stumbled back about three feet and then fell onto her back. § 87(2)(b) and § 87(2)(b) reached down to lift § 87(2)(b) up, but Police Officer Benjamin Alvarado told them, "She's going to come with me." He leaned down over § 87(2)(b) to handcuff

her. § 87(2)(b) started squirming her body. Police Officer Benjamin Alvarado used his Taser on § 87(2)(b). He then handcuffed her.

While § 87(2)(b) did not provide a sworn statement, she alleged in her initial complaint that an officer used a Taser against § 87(2)(b) during her arrest. She did not identify the officer or describe this action in any further detail. She did not mention an officer pushing § 87(2)(b) or taking her to the ground.

§ 87(2)(b) was not aware of any officers using physical force during this incident. The two § 87(2)(b) witnesses stated that they left the McDonald's before the police responded.

Police Officer Julien, Sergeant Chacko and Police Officer Benjamin Alvarado all stated that when Police Officer Julien was handcuffing § 87(2)(b), § 87(2)(b) attempted to physically intervene. Police Officer Julien stated that she hit him on the back of the head. Sergeant Chacko stated that she kicked Police Officer Julien in the head. Police Officer Benjamin Alvarado initially stated that § 87(2)(b) kicked Police Officer Julien in the face and jumped on his back, but later stated that § 87(2)(b) kicked Police Officer Julien and that § 87(2)(b) only jumped on his back. Police Officer Dempsey did not see § 87(2)(b) use force against Police Officer Julien but recalled that Police Officer Julien claimed after the incident that § 87(2)(b) had kicked him in the face. Sergeant Chacko, Police Officer Dempsey and Police Officer Benjamin Alvarado stated that Sergeant Chacko ordered Police Officer Dempsey and Police Officer Benjamin Alvarado to arrest § 87(2)(b). Police Officer Julien did not mention this order but did note that other officers arrested § 87(2)(b) while he dealt with § 87(2)(b).

Police Officer Dempsey stated that he walked up to § 87(2)(b) and told her that she was under arrest. She replied, "No, no, no." He then grabbed one of her arms and tried to pull it behind her back. § 87(2)(b) responded by pulling both of her arms away and twisting her torso. Police Officer Dempsey then decided to bring her to the ground to restrain her. He did not recall what specific actions he took to bring her down. § 87(2)(b) landed on her back. Police Officer Dempsey then knelt down and rolled her onto her side so that he could bring her arms behind her back. § 87(2)(b) continued trying to pull her arms away while on the ground, but Police Officer Dempsey, with Police Officer Brian Alvarado's assistance, was able to overcome this by pulling her arms back. After about 30 seconds, the two officers got § 87(2)(b)'s arms back and handcuffed her. They did not use any further force besides bringing her to the ground and pulling on her arms.

Police Officer Brian Alvarado stated that § 87(2)(b) was on Police Officer Julien's back when he first made contact. He pushed her off, causing her to fall to the ground, landing on her back. He and Police Officer Dempsey then leaned down over § 87(2)(b) and tried to handcuff her. § 87(2)(b) resisted by holding her arms against her chest and tensing her body. Police Officer Benjamin Alvarado warned her that she would be Tased if she continued resisting. § 87(2)(b) became compliant, allowing the officers to handcuff her. Police Officer Benjamin Alvarado denied that he or Police Officer Dempsey used any further force against § 87(2)(b).

Sergeant Chacko and Police Officer Julien stated that they focused their attention on § 87(2)(b)'s arrest and did not see if Police Officer Dempsey or Police Officer Benjamin Alvarado used physical force against § 87(2)(b) while arresting her.

Police Officer Christopher Alvarado and Police Officer Gonzalez both stated that they helped arrest a female. They did not know her name. The investigation identified her as § 87(2)(b). Both officers denied participating in any other arrests. Police Officer Gonzalez did not recall witnessing

any other arrests besides § 87(2)(b) s. Police Officer Christopher Alvarado did recall seeing another officer arrest a different female. He did not recall who the female was or who the officer was. He did not recall observing the officer and the female engage in any physical struggle. He was not aware of officers pushing any females to the ground during the incident.

Police Officer Dempsey prepared a TRI report for this incident (Board Review #13). It states that he used “wrestling/grappling” against § 87(2)(b) He did so to defend himself, defend other officers, defend a member of the public and to overcome § 87(2)(b) s resistance.

Captain O’Hanlon also prepared a TRI to document all three arrests made during this incident (Board Review #11). It states that that § 87(2)(b) kicked Police Officer Julien in the head while he handcuffed § 87(2)(b) Police Officer Benjamin Alvarado and Police Officer Dempsey then forced her to the ground and arrested her.

Police Officer Benjamin Alvarado’s BWC footage is attached in IA #123 (Board Review #03). At 2:15 into the recording, Sergeant Chacko grabs § 87(2)(b) s arm. The camera then starts shaking. Several people are heard shouting in the background. Police Officer Benjamin Alvarado states, “Get back.” At 2:26 into the recording, Sergeant Chacko and Police Officer Julien are seen standing over an individual, identified as § 87(2)(b) Police Officer Benjamin Alvarado tells several other bystanders to back away from them. At 3:10 into the recording, Police Officer Dempsey is leaning down over an individual who is lying on the ground. Police Officer Benjamin Alvarado identified her in his CCRB testimony as § 87(2)(b) . § 87(2)(b) ’s face is blurred out and the recording’s audio cuts out due to the NYPD Legal Bureau’s redaction. The two officers reach towards § 87(2)(b) s torso. Their contact is not clearly seen due to the blurring effect. Police Officer Benjamin Alvarado holds a Taser in his right hand. He is not seen using it. The two officers then turn § 87(2)(b) onto her left side with her arms behind her back. At 3:50 into the recording, they lift § 87(2)(b) to her feet and escort her to a marked vehicle.

§ 87(2)(b), § 87(2)(g)

Police Officer Benjamin Alvarado’s BWC footage indicates that § 87(2)(b) was already on the ground before he approached her. Police Officer Dempsey was kneeling besides her when Police Officer Benjamin Alvarado approached. § 87(2)(g)

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to ensure the safety of a third person or when it is reasonable to place a person in custody. All applications of force must be reasonable under the circumstances. Factors to consider when determining if a given use of force was reasonable include the actions taken by the subject, the immediacy of any perceived threat the subject poses, whether the subject is actively resisting custody and the presence of a hostile crowd (Board Review #12).

§ 87(2)(b), § 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Benjamin Alvarado threatened § 87(2)(b) with the use of force.

It is undisputed that Police Officer Benjamin Alvarado drew his Taser while he and Police Officer Dempsey were handcuffing § 87(2)(b).

§ 87(2)(b) stated that she was first pushed to the ground by Police Officer Dempsey. She lost consciousness for a few seconds. She then saw Police Officer Benjamin Alvarado draw a Taser. He told her that he would use it if she did not “stop resisting.” § 87(2)(b) initially stated that she was resisting the officers at the time. When asked to clarify the specific actions she took, however, she stated that asked Police Officer Benjamin Alvarado why she was being arrested but did not make any movements. § 87(2)(b) did not recall Police Officer Benjamin Alvarado using the Taser at any point. She did not see any wires or prongs attached to her body during this incident.

§ 87(2)(b) stated that Police Officer Benjamin Alvarado was the officer who pushed § 87(2)(b) to the ground. Once § 87(2)(b) was down, she started squirming her body. Police Officer Benjamin Alvarado told her, “Stop moving or I’m going to Tase you.” He then drew his Taser, which § 87(2)(b) described as a small black object about four inches long. Police Officer Benjamin Alvarado held the object against one of § 87(2)(b)’s thighs for about seven seconds. § 87(2)(b) continued squirming and did not say anything. Police Officer Benjamin Alvarado then held the device against her thigh for about five more seconds before handcuffing § 87(2)(b).

While § 87(2)(b) did not provide a sworn statement, she alleged in her initial complaint that an officer used a Taser against § 87(2)(b) during her arrest. She did not identify the officer or describe this action in any further detail.

§ 87(2)(b) was not aware of any officers using a Taser during this incident. The two § 87(2)(b) witnesses stated that they left the McDonald’s before the police responded.

Police Officer Benjamin Alvarado stated that when he and Police Officer Dempsey attempted to handcuff § 87(2)(b) she resisted them by tensing her body, holding her arms against her torso and squirming her body. Police Officer Benjamin Alvarado responded to this resistance by drawing his Taser and telling her, “Stop resisting or you’re gonna get Tased.” He issued this warning to gain § 87(2)(b)’s compliance. § 87(2)(b) ceased her resistance immediately and allowed the two officers to handcuff her. Police Officer Benjamin Alvarado put his Taser away afterwards. He denied using it. He was not aware of any other officers using a Taser during this incident.

None of the other officers recalled seeing an officer draw, hold or use a Taser during this incident. None of them heard an officer threaten to use a Taser on a civilian. Police Officer Gonzalez did recall hearing an unidentified civilian say that an officer was holding a Taser, but he did not see the alleged Taser himself at any point.

Captain O’Hanlon also prepared a TRI to document all three arrests made during this incident (Board Review #11). It states that that while Police Officer Benjamin Alvarado was handcuffing § 87(2)(b) he threatened to use a Taser “as deterrent.” He did not ultimately use the Taser.

Police Officer Benjamin Alvarado’s BWC footage shows him leaning down over § 87(2)(b) between 3:10 and 3:50 into the recording (Board Review #03). Due to the NYPD Legal Bureau’s redaction, the audio cuts out during this period. As such, his words cannot be heard. Police Officer Benjamin Alvarado does hold a Taser in his right hand during this time. He is not seen discharging

it.

§ 87(2)(b), § 87(2)(g)

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to ensure the safety of a third person or when it is reasonable to place a person in custody. All applications of force must be reasonable under the circumstances. Factors to consider when determining if a given use of force was reasonable include the actions taken by the subject, the immediacy of any perceived threat the subject poses, whether the subject is actively resisting custody and the presence of a hostile crowd (Board Review #12).

NYPD Patrol Guide procedure 221-08 states that officers may only use conducted energy weapons (CEWs) such as Tasers to subdue individuals who are actively resisting arrest, exhibiting active aggression, or to prevent them from injuring themselves or others. Active resistance is defined as physically evasive movements meant to prevent officers from arresting a person, including bracing or tensing their body. Active aggression is defined as an overt act of assault or threat of assault, coupled with the present ability to carry the threat out. Officers are directed, when able, to issue a verbal warning to the subject before using a CEW (Board Review #14).

§ 87(2)(b), § 87(2)(g)

Allegation (H) Force: Police Officer Benjamin Alvarado used physical force against § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that when § 87(2)(b) was forced to the ground, She and § 87(2)(b) both reached down and tried to pull her away from the officers around her. Police Officer Benjamin Alvarado told them both to stop. He then pushed § 87(2)(b) away from § 87(2)(b) causing her body to strike the side of the McDonald's. Police Officer Benjamin Alvarado made no further contact with her. § 87(2)(b) was not injured and was not arrested.

While § 87(2)(b) did not provide a sworn statement regarding this incident, she alleged in her initial complaint that an officer pushed her to the ground twice. She did not identify the officer or describe this action in any further detail.

§ 87(2)(b) made no mention of § 87(2)(b) in her statement. § 87(2)(b) was not aware of any officers using physical force during this incident. The two § 87(2)(b) witnesses stated that they left the McDonald's before the police responded.

Police Officer Benjamin Alvarado denied using physical force against any other civilians besides § 87(2)(b) during this incident. Neither he nor any of the other officers interviewed were aware of

an officer pushing a civilian to the ground who was not ultimately arrested.

Captain O'Hanlon also prepared a TRI to document all three arrests made during this incident (Board Review #11). It states that § 87(2)(b) testified that after § 87(2)(b)'s arrest, an officer pushed her to the ground.

Police Officer Benjamin Alvarado's BWC footage depicts the period immediately after § 87(2)(b)'s and § 87(2)(b)'s arrests (Board Review #03). Police Officer Dempsey's own BWC footage was not provided by the NYPD Legal Bureau. At 2:15 into the recording, Sergeant Chacko grabs § 87(2)(b) to arrest her. The camera starts shaking, making it hard to see what is happening on-screen. Several voices start shouting in the background and Police Officer Benjamin Alvarado says, "Get back, get back." Police Officer Benjamin Alvarado and several other officers are then seen pushing several people away. It is unclear who these officers are, who they are pushing or whether any of them fall to the ground. At 3:10 into the recording, Police Officer Dempsey is seen kneeling down next to an individual who is blurred out by the NYPD Legal Bureau's redaction, identified as § 87(2)(b). Police Officer Benjamin Alvarado joins Police Officer Dempsey in arresting § 87(2)(b). He does not make contact with any other civilians after that point.

§ 87(2)(g) Police Officer Benjamin Alvarado § 87(2)(b), § 87(2)(g) BWC footage shows that there was an approximately minute-long window between § 87(2)(b)'s arrest and when Police Officer Benjamin Alvarado joined Police Officer Dempsey in handcuffing § 87(2)(b). During this period, the footage shows several civilians scuffling with officers as well as several officers pushing them away from § 87(2)(b). It does not clearly show who the civilians or officers were, what actions the civilians took as they approach § 87(2)(b) or whether any of them were knocked down. It is unclear if § 87(2)(b) was one of them. Police Officer Benjamin Alvarado's BWC camera is also shaking through much of this period, making it difficult to tell what is happening on-screen.

§ 87(2)(b), § 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Benjamin Alvarado threatened to arrest

§ 87(2)(b) :

§ 87(2)(b) stated that she observed an officer push § 87(2)(b) and § 87(2)(b) to the ground and then arrest § 87(2)(b). As the officer placed § 87(2)(b) in handcuffs, § 87(2)(b) walked over to § 87(2)(b) intending to help her to her feet. Before she could do so, the same officer who pushed § 87(2)(b) and § 87(2)(b) turned towards § 87(2)(b) and shined a flashlight at her. The officer told § 87(2)(b) "If you move, you're going to come with me, too." § 87(2)(b) refrained from reaching down to § 87(2)(b). Neither § 87(2)(b) nor § 87(2)(b) was ultimately arrested.

Neither § 87(2)(b) nor § 87(2)(b) made mention of § 87(2)(b) in their statements. They made no mention of any officer threatening to arrest any civilians who were not later arrested.

§ 87(2)(b) stated that he observed officers arrest several students. He made no mention of officers threatening to arrest any of the students who were not taken into custody.

As discussed earlier, Sergeant Chacko stated that he threatened to arrest several of the civilians while trying to disperse them from the restaurant. He was not aware of any officers threatening to

arrest any civilians later on, after the arrests were made. None of the other officers, including Police Officer Benjamin Alvarado, were aware of any officers threatening to arrest any civilians who were not ultimately taken into custody.

Besides Sergeant Chacko's threats made early in the incident, when he was ordering the civilians to disperse from the McDonald's, no other threats of arrest are heard in the various BWC clips (Board Review #03).

§ 87(2)(b), § 87(2)(g)

Allegation (J) Discourtesy: Sergeant Tony Chacko spoke discourteously to individuals.

Allegation (K) Discourtesy: Police Officer Frankie Dodd spoke discourteously to individuals.

None of the civilians mentioned any of the officers using profanity while ordering the crowd to disperse from the McDonald's.

Police Officer Dodd's BWC footage shows him and several other officers attempting to disperse the civilians from the McDonald's. He follows them as they start to walk away. At 1:55 into the recording, an unidentified individual turns and starts running back towards the McDonald's. Several people start screaming in the background. Police Officer Dodd's camera starts to shake and another voice states, "Back up." Police Officer Dodd states, "Back up. Get the fuck out," and, "Get the fuck away." It is unclear who he is addressing (Board Review #03).

Police Officer Benjamin Alvarado's BWC footage shows that after he arrested § 87(2)(b) he loaded her into a marked police vehicle. He then walked back towards the other members of the group, who had moved down the block. He and several other officers follow the group for about another block before breaking off. Several of the civilians in the group walk in the street. Officers tell them not to walk in the street. At 5:55 into the recording, an unseen voice shouts, "Get the fuck off the streets" (Board Review #03).

Sergeant Chacko did not recall using any profanity during this incident. After viewing Police Officer Benjamin Alvarado's BWC footage, however, identified himself as the person who stated, "Get the fuck off the streets." He recalled that some of the civilians leaving the McDonald's were walking in the street, and that one of them was almost hit by a passing vehicle. That event was not depicted in the video. Sergeant Chacko recalled that he told the civilians to "get the fuck off the streets" because he was concerned that one of them might get hit by a vehicle.

NYPD Patrol Guide procedure 200-02 states that the NYPD is committed to treating people with compassion, courtesy, professionalism and respect, that officers should respect the dignity of each individual, and that officers should render services with courtesy and civility (Board Review #15).

Officers may use limited profanity while interacting with civilians when they do so in the context of a dynamic situation in which they are attempting to gain control. Officers may not use profanity when it serves no legitimate law enforcement purpose and is intended only to belittle or insult. PD v. Pichardo, DAO-DCT case #2015-15012 (Board Review #16).

§ 87(2)(g)

§ 87(2)(g)

The officers spent several minutes attempting to get them to leave. When Sergeant Chacko had § 87(2)(b) arrested, many of the civilians around her shouted at the officers and tried to approach her. § 87(2)(b) used force against Police Officer Julien in an attempt to defeat § 87(2)(b)'s arrest.

The BWC footage indicates that Police Officer Dodd told the civilians to “get the fuck out” and “get the fuck away” when they initially responded to § 87(2)(b)'s arrest. § 87(2)(g)

§ 87(2)(g)

Police Officer Benjamin Alvarado's BWC footage showed that many of the people leaving the McDonald's did so by walking into an active roadway. They did so even after officers told them to get out of the street.

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which any of the civilians have been a party (Board Review #17).
- Police Officer Julien has been a member of the service for six years and has been identified as a subject in one previous CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g)
- Sergeant Chacko has been a member of the service for thirteen years and has been identified as a subject in four previous CCRB complaints and twelve allegations, one of which was substantiated:
 - 200909310 involved a substantiated stop allegation. The Board recommended that he receive charges. The NYPD administered instructions.
 - § 87(2)(g)
- Police Officer Dempsey has been a member of the service for three years and has been identified as a subject in one previous CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Police Officer Benjamin Alvarado has been a member of the service for three years and has been identified as a subject in one previous CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Police Officer Dodd has been a member of the service for three years and has been identified as a subject in one previous CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

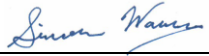
Mediation, Civil and Criminal Histories

- This complaint was not eligible for mediation.
- As of November 10, 2020, no Notices of Claim were filed with the NYC Office of the Comptroller regarding this complaint.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 15

Investigator:	<u>Owen Godshall</u>	<u>Inv. Owen Godshall</u>	<u>12/02/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>12/03/21</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date